

FIRST REGULAR SESSION

SENATE BILL NO. 43

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR DAYS.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0463S.01I

AN ACT

To repeal section 375.918, RSMo, and to enact in lieu thereof one new section relating to the use of credit scores by insurance companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 375.918, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 375.918, to read as follows:

375.918. 1. As used in this section, the following terms mean:

(1) "Adverse action", [a denial, nonrenewal of, or a reduction in the amount of benefits payable or types of coverages under any contract, existing or applied for, in connection with the underwriting of insurance. An offer by an insurer to write a contract through an affiliated insurer does not constitute an adverse action] **the same meaning as defined in the Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq. Adverse actions include, but are not limited to:**

(a) **Cancellation, denial, or nonrenewal of personal insurance coverage;**

(b) **Charging a higher insurance premium for personal insurance than would have been offered if the credit history or insurance credit score had been more favorable, whether the charge is by application of a rating rule, assignment to a rating tier that does not have the lowest available rates, or placement with an affiliate company that does not offer the lowest rates available to the consumer within the affiliate group of insurance companies; or**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(c) Any reduction, adverse, or unfavorable change in the terms of coverage or amount of any personal insurance due to a consumer's credit history or insurance credit score. A reduction, adverse, or unfavorable change in the terms of coverage occurs when either the coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but is available to other insureds of the insurer or any affiliate, or the consumer is not eligible for benefits such as dividends that are available through affiliated insurers;

(2) "Affiliate", any company that controls, is controlled by, or is under common control with another company;

(3) "Applicant", an individual who has applied to be covered by a personal insurance policy with an insurer;

(4) "Consumer", an insured whose credit information is used or whose insurance credit score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy;

(5) "Consumer reporting agency", any entity which, for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or credit insurance scores to third parties;

[(2)] (6) "Contract", any automobile insurance policy as defined in section 379.110, RSMo, or any property insurance policy as defined in section 375.001, including [such a policy on a mobile home or residential condominium unit or a policy of renters' or tenants' insurance] **private passenger automobile, homeowners, motorcycle, mobile homeowners, manufactured homeowners, condominium owners, renter's coverage, personal liability and theft coverage, personal inland marine coverage, mechanical breakdown coverage for personal auto or home appliances, noncommercial dwelling fire insurance policies, boat, personal watercraft, snowmobile, and recreational vehicle policies.** Contract shall not include any policy of mortgage insurance or commercial insurance;

(7) "Credit information", any insurance credit score or credit-related information derived from a credit report, found on a credit report itself, or provided on an application for insurance, but shall not include information that is not credit-related;

[(3)] (8) "Credit report", any written or electronic communication of any information by a consumer reporting agency that:

(a) Bears on a person's credit worthiness, credit standing, or credit capacity; and

(b) Is used or collected wholly or partly to serve as a factor in the underwriting of a contract;

[(4)] (9) "Credit scoring entity", any entity that is involved in creating, compiling, or providing insurance credit scores;

[(5)] (10) "Insurance credit score", a **rating or** numerical representation [of the insurance risk a person presents using the person's attributes] derived [from] **by using a formula, algorithm, computer application, model, or other process that is based in whole or in part on the** credit report or credit information [in a formula to assess insurance risk on an actuarial or statistical basis] **of an applicant;**

[(6)] (11) "Insurer", any insurance company or entity that offers a contract;

[(7)] (12) "Underwriting", the selection of the risk that will be assumed by the insurer on a contract, and specifically the decision whether to accept, deny, renew, nonrenew, reduce, or increase the amount of benefits payable, **premium rate for coverage**, or types of coverages under the contract.

2. An insurer using a credit report or insurance credit score as a factor in underwriting shall not take an adverse action based on such factor without consideration of another noncredit-related underwriting factor.

3. [No insurer shall take an adverse action against an applicant or insured based on inability to compute an insurance credit score without consideration of another underwriting factor, unless the insurer can justify the credibility that the lack of an insurance credit score has in underwriting to the director of insurance.

4.] **An insurer shall not use an insurance credit score to underwrite or rate risks, that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, education level, or nationality of the consumer as a factor. No insurer shall use loss information in calculating its insurance credit score if it also uses loss information separately to calculate its rates.**

4. **No insurer shall consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating**

personal insurance, unless the insurer treats the consumer as if the applicant or insured had neutral credit information or excludes the use of credit information as a factor and uses only other underwriting criteria.

5. No insurer shall use credit information to underwrite or reunderwrite a policy after the policy has been in force for more than thirty-six months unless there is a substantial change in the risk based upon other underwriting or rating factors, excluding credit information. Notwithstanding the requirements of this subsection:

(1) At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall re-underwrite and re-rate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance credit score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period;

(2) The insurer shall have the discretion to obtain current credit information upon any renewal before the thirty-six month period, if consistent with its underwriting guidelines;

(3) No insurer needs to obtain current credit information for an insured, notwithstanding the provisions of subdivision (1) of this subsection, if one of the following applies:

(a) The insured is in the most favorably priced tier of an unaffiliated insurer, or in the most favorably priced tier of the most favorably priced company within a group of affiliated insurers; provided, however, the insurer shall have the discretion to order such a report, if consistent with its underwriting guidelines; or

(b) Credit was not used for underwriting or rating such insured when the policy was initially written; provided, however, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal, if consistent with its underwriting guidelines.

6. An insurer using a credit report or insurance credit score as a factor in underwriting a contract shall disclose at the time of the original application for the contract or on the application itself that the insurer may gather credit information.

[5.] 7. An insurer using a credit report or insurance credit score as a factor in underwriting of a contract shall not take an adverse action on such

contract based on information that is the subject of a written dispute between the policyholder or applicant and a consumer reporting agency, as noted in such person's credit report, until such dispute has reached final determination in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq. In the event that information is the subject of a written dispute under this subsection, the sixty-day period provided by section 375.002 or section 379.110, RSMo, shall be extended until fifteen days after the dispute reaches final determination. Nothing in this subsection shall be construed to require any consumer reporting agency, as defined by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq., to include any information on a credit report beyond the extent required by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.

[6.] 8. If the use of a credit report or insurance credit score on a contract results in an adverse action, the insurer shall provide the policyholder or applicant:

(1) Notice that a credit report or insurance credit score adversely affected the underwriting of the contract;

(2) The name, address, and telephone number of the consumer credit reporting agency that furnished the credit information, in compliance with the notice requirements of the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.;

(3) Notice of the right to obtain a free credit report from the consumer credit reporting agency within sixty days; and

(4) Notice of the right to lodge a dispute with the consumer credit reporting agency to have any erroneous information corrected in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.

[7.] 9. Within thirty days from the date the insurer provides notice of an adverse action pursuant to subdivision (1) of subsection **[6] 8** of this section, the applicant or insured may in writing request from the insurer a statement of reasons for such action. For purposes of determining the thirty-day period, the notice of an adverse action is deemed received three days after mailing. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without further inquiry. An insurer may provide an explanation of significant characteristics of the credit history that may have impacted such person's insurance credit score to meet the requirements of this subsection. Standardized

credit explanations provided by credit scoring entities comply with this subsection.

[8.] **10.** If an insurer bases an adverse action in part on a credit report or insurance credit score, the applicant or insured may within thirty days of such adverse action make a written request for reunderwriting following any correction relating to the credit report or insurance credit score.

[9. An insurer may obtain and use a current credit report or insurance credit score on new business or renewal contracts, but shall not take an adverse action with respect to renewal contracts based upon such credit report or insurance credit score until or after the third anniversary date of the initial contract.

10. Insurance inquiries shall not directly or indirectly be used as a negative factor in any insurance credit scoring formula or in the use of a credit report in underwriting.]

11. Neither the insurer nor consumer reporting agency shall use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(1) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information;

(2) Inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(3) Collection accounts with a medical industry code, if so identified on the consumer's credit report;

(4) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of each other, unless only one inquiry is considered;

(5) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of each other, unless only one inquiry is considered;

(6) The absence of credit history or the inability to determine the consumer's credit history unless pursuant to the provisions of subsection 4 of this section;

(7) The consumer's use of a particular type of credit card, charge

card, or debit card; or

(8) The consumer's total available line of credit; provided, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

12. Nothing in this section shall be construed as superceding the provisions of section 375.002 and section 379.114, RSMo. Nothing in this section shall be construed as prohibiting any insurer from using credit information in determining whether to offer a policyholder or applicant the option to finance or establish a payment plan for the payment of any premium for a contract. Nothing in this section shall apply to any entity not acting as an insurer or credit scoring entity as defined in subsection 1 of this section.

[12.] 13. No credit scoring entity shall provide or sell to any party, other than the insurer, its insurance company affiliates or holding companies, and the producer from whom the inquiry was generated, data or lists that include any information that in whole or in part is submitted in conjunction with credit inquiries about consumers. Such information includes, but is not limited to, expiration dates, information that may identify time periods during which a consumer's insurance may expire, or other nonpublic personal information as defined under the Gramm-Leach-Bliley Act, 15 U.S.C. Sections 6801 to 6809. The provisions of this subsection shall not preclude the exchange of information specifically authorized under the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq., the Gramm-Leach-Bliley Act, 15 U.S.C. Sections 6801 to 6809 and other applicable federal law. The provisions of this subsection shall not apply to data disclosed in connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of an insurer's or producer's business or operating unit, including but not limited to, the sale of a portfolio of contracts, if such disclosure concerns solely consumers of the business or unit and such disclosure is not the primary reason for the sale, merger, transfer or exchange.

[13.] 14. A violation of this section may be enforceable under section 374.280, RSMo.

15. Insurers that use insurance credit scores to underwrite and rate risks shall file their scoring models or other scoring processes with the department of insurance. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information. Any filing relating to credit information is considered a trade secret pursuant to

sections 417.450 to 417.467, RSMo.

[14.] **16.** The provisions of this section shall apply to all contracts entered into on or after July 1, 2003.

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